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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

(1) MEGAN CAPEL, Administratix,  
of the Estate of Terral Brooks  
Ellis, II, Deceased,  
(2) TERRAL B. ELLIS, SR., and  
(3) SHELLY BLISS,  
Plaintiffs,

Vs.

CIV-17-325-JED-FHM

OTTAWA COUNTY BOARD OF COUNTY  
COMMISSIONERS, et al,  
Defendants.

VIDEO DEPOSITION OF  
THERESA HORN

DATE: OCTOBER 8, 2019

REPORTER: MARISA SPALDING, CSR, RPR

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1 Q (By Mr. Smolen) I'm sorry? No? I  
2 forgot to tell you. You might remember this  
3 from the last deposition. There's a group of  
4 lawyers in here that might object to the form of  
5 my question. You still need to answer until Jim  
6 tells you not to answer, okay?

7 A Okay.

8 Q You indicated no one was ever critical  
9 of any of the help that you had offered --

10 A Not --

11 Q -- to the inmates?

12 A -- that I was aware of. Oh, I'm sorry.

13 MS. GOOCH: Let him finish the  
14 question.

15 THE WITNESS: Okay.

16 MS. GOOCH: Object to the form of  
17 that question.

18 Q (By Mr. Smolen) To your knowledge, has  
19 anyone at the Ottawa County Sheriff's Office  
20 ever expressed to you concerns that they had  
21 with your delivery of medical at the jail?

22 MS. GOOCH: Object to the form.

23 MR. GIBBS: You can answer.

24 THE WITNESS: Not that I was aware  
25 of, no. Nobody said anything to me.

1 Q Uh-huh.

2 A I wasn't.

3 Q Okay. Have you been on pain medication  
4 for that?

5 A Just right after surgery.

6 Q When was your surgery?

7 A May 10th.

8 Q Of what year?

9 A This year.

10 Q What do you have to do to stay  
11 registered as an LPN with the State of Oklahoma?

12 A You have to just keep your license  
13 renewed.

14 Q And what's that process?

15 A Every two years you have to go online  
16 and just -- they just up -- upgrade it for the  
17 next two years.

18 Q Are you required to do any continuing  
19 education?

20 A No.

21 Q Have you done any continuing education  
22 in the area of being an LPN since -- let's say  
23 2013?

24 A I went to jail school.

25 Q Went to jail school. When did you go to

1 jail school?

2 A Every year.

3 Q And what is jail school?

4 A It's the school the State puts on that's  
5 state required for every jailer or whoever works  
6 back in the jail to take every year.

7 Q And where did that take place at?

8 A Usually at the courthouse.

9 Q And are there sign-in sheets?

10 A Yes.

11 Q Who administers that yearly review?

12 A It varied from the jail administrator to  
13 the undersheriff. It just varied every year.

14 Q And was that specific to the Ottawa  
15 County Jail?

16 A No, it was specific to the state --  
17 every jail in the state.

18 Q And so would the jail administrator from  
19 the Ottawa County Jail be holding that?

20 A He has in the past. They have a  
21 curriculum they have to -- we have to go by --  
22 or they did.

23 Q Beyond doing the yearly jail school,  
24 have you had any other additional training or  
25 education in the area of being an LPN?

1       they had an emergency hours that I could fax the  
2       order to them. But like I said, we may not get  
3       that medication that night. It may be the next  
4       morning. If it was something that was a matter  
5       of life or death, I would send them to the ER to  
6       get that medication.

7           Q    (By Mr. Smolen) You had indicated there  
8       wasn't a set time that Aleta Fox would come, but  
9       she would come at your request and, generally,  
10       it would be maybe once or twice a week --

11       A    Uh-huh.

12       Q    -- that you called, correct?

13       A    Correct.

14       Q    And was that just for her to see  
15       specific inmates that you wanted her to see?

16       A    The process of her seeing an inmate was  
17       if they -- they would fill out a sick call slip  
18       and -- and/or they had gotten into a fight that  
19       day or anything that had happened.

20       Q    An acute injury?

21       A    Yes, then I would call her and she would  
22       come over.

23       Q    Okay. Would you call her for every sick  
24       call slip?

25       A    No.

1 Q Okay. How would you decide which ones  
2 to call her on and which ones not to?

3 A Well, I did kind of like a triage  
4 procedure. I would have them come to my office.  
5 And then if it was something that I needed her  
6 to see for, I would call her and she would come  
7 over.

8 Q And -- and how -- I want you to walk me  
9 through that triage process and what would lead  
10 you to make that decision to call Ms. Fox.

11 A Well, if they had something that I could  
12 not manage in the scope of my licensed nurse --  
13 licensure -- I would call her.

14 Q Okay. Now are you allowed to make a  
15 diagnosis as an LPN?

16 A No.

17 Q Okay. So if you're not allowed to make  
18 a diagnosis as an LPN, how are you ruling out  
19 who to call Ms. Fox for and who not to call Ms.  
20 Fox for?

21 MR. GIBBS: Object to the form.

22 THE WITNESS: Well, that would only  
23 be for the inmates that would come in and would  
24 tell me they have these issues. If they had no  
25 outward signs of this medical condition, then I

1 -- after -- I would call their physician to get  
2 the -- her -- their PI-- PHI -- or I would call  
3 Aleta and they would come -- she would come  
4 over.

5 Q (By Mr. Smolen) You're saying if they  
6 had no outward signs of their medical condition?

7 A Right, if they wasn't exhibiting any --  
8 any out -- like somebody had asthma or something  
9 along that line because...

10 Q So let's use the asthma examples.

11 Someone comes in and they've got asthma, there's  
12 no outward sign of a medical condition --

13 A Uh-huh.

14 Q -- you would call her?

15 A Well, if they needed an inhaler. Most  
16 usually, I would have them -- I would let them  
17 call their family or I would call their  
18 pharmacist and they would deliver their meds or  
19 I would go get them.

20 Q Okay. But the triage process, I mean,  
21 that's a specific example you gave where someone  
22 comes in and they've got asthma and they need an  
23 inhaler and you know they've got a prior --

24 A Uh-huh.

25 Q -- history of asthma?

1 A Uh-huh.

2 Q What about with the sick calls, though?

3 When you're going through and you're assessing  
4 the sick call notes, can you walk me through the  
5 process as to how you decide which ones to call  
6 Ms. Fox on and which ones you wouldn't?

7 A If it was something that I couldn't --  
8 that was outside the realm of my licensure then  
9 --

10 Q Let -- okay, then let's -- let's define  
11 --

12 MR. GIBBS: Hang on. Were you done  
13 with your answer? I want her to finish her  
14 answer. Go ahead.

15 THE WITNESS: Then I would call her.

16 Q (By Mr. Smolen) Okay. Let's -- let's  
17 define what you understood your scope to include  
18 as an LPN.

19 A That's hard to say working in a jail  
20 facility. I don't know how to answer that.

21 Q Well, I just want you to tell me what  
22 you understood your scope as an LPN to be?

23 A Well, if they had something that they  
24 needed -- like a staff infection or an abscess,  
25 I could not do that. If they came in and

1 presenting a fractured limb from prior to being  
2 arrested, I would call her.

3 Q But you're triaging the sick calls  
4 before Ms. Fox ever sees them, correct?

5 A Uh-huh.

6 Q Yes?

7 A Yes.

8 Q And how would you assess a sick call as  
9 to whether or not a person needed to see a  
10 doctor or not without making a diagnosis?

11 MR. GIBBS: Object to the form. Go  
12 ahead.

13 THE WITNESS: I don't know how to  
14 answer that one.

15 Q (By Mr. Smolen) I mean, at some level,  
16 you're having to make a diagnosis when you are  
17 triaging the sick calls as to whether or not an  
18 inmate needs to see a physician or not, correct  
19 or --

20 MR. GIBBS: Object --

21 Q (By Mr. Smolen) -- a physician's  
22 assistant?

23 MR. GIBBS: Object to the form.

24 THE WITNESS: No, I'm not making a  
25 diagnosis because I'm not allowed to do that.

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1 Q Just what you recall about Mr. Ellis,  
2 like we did with the other --

3 A Okay, I don't --

4 Q We talked about some of the other  
5 inmates.

6 A Right. He had complained of back pain  
7 one time -- once -- and he wanted to go to a  
8 chiropractor because he said he had been to a  
9 chiropractor before, I think is what he said.  
10 Then I -- I don't know if I let him call his  
11 grandfather or we was going to call his  
12 grandfather -- I don't remember that -- and he  
13 was going to set him up an appointment and we  
14 would take him.

15 And then I don't remember them calling me  
16 about sending -- calling EMS but it's in my  
17 notes, but I don't actually recall it. And then  
18 I remember coming to work the next day and he  
19 was down in H1.

20 Q Down in H1?

21 A Yes.

22 Q Now earlier in the deposition, you had  
23 said that you had always preferred them to house  
24 in H2. We were talking about -- I think it was  
25 about a suicide. What was your preference

1 pertaining to that first visit? You had  
2 mentioned the chiropractor, maybe call -- let  
3 him call his grandpa. Anything else?

4 A Only what I documented. I don't  
5 remember that day -- it's been so long ago --  
6 that he had a protrusion in the L1 or L2 or  
7 somewhere along the spine. He said he had --  
8 and he told me that -- that he had frequently  
9 had his back to pop out of place and he wanted  
10 to go -- he's the one that's suggested going to  
11 the chiropractor.

12 Q I'll hand you what we're going to mark  
13 as Plaintiff's Exhibit No. 3.

14 (Plaintiff's Exhibit No. 3  
15 marked for identification)

16 Q Ma'am, do you recognize this document?

17 A I recognize it as my writing.

18 Q Okay. And it's the progress notes  
19 pertaining to Terral Ellis, correct?

20 A Correct.

21 Q And I noticed on the last note here you  
22 signed that note, correct?

23 A Yes.

24 Q When did you complete your progress  
25 notes?

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1 you?

2 A No.

3 Q Correct?

4 A Correct.

5 MR. SMOLEN: Let's watch the video  
6 from the 22nd.

7 Q (By Mr. Smolen) You understood that  
8 there was a jail video and jail audio at the  
9 Ottawa County Jail outside of the medical unit,  
10 correct, in what you've described as the holding  
11 area?

12 A Yes.

13 Q And were you aware at the time that Mr.  
14 Ellis was housed in there that it was video --  
15 monitored by video and audio?

16 A Yes.

17 Q Okay. I'm going to play some clips and  
18 ask you some questions about those.

19 (Video playing)

20 Q Can you describe to the jury what  
21 they're seeing on the left -- top left-hand  
22 corner?

23 A The book-in desk.

24 Q Okay. And in the right -- top-hand  
25 right, what are they seeing?

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1 A Those are the holding cages.

2 Q Okay. And Mr. Ellis' holding cell, he's  
3 not in the cage. He's off to the right hand of  
4 that, correct?

5 A Yes, over there.

6 Q And then we have the long hallway in the  
7 bottom right, correct?

8 A Correct.

9 Q And then another angle shot of the  
10 book-in desk, correct?

11 A Correct.

12 (Video playing)

13 Q Can you identify who that jailer is?

14 A That's Charles Shoemaker.

15 Q Okay. Was he a supervisor?

16 A He was the assistant jail administrator.

17 Q Assistant jail administrator?

18 A Yes.

19 Q During 2015?

20 A Yes.

21 Q Was he your supervisor?

22 A No.

23 (Video playing)

24 Q You had an opportunity to review the  
25 jail video and audio from at least this one

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1 encounter with Mr. Ellis, correct?

2 A Uh-huh.

3 Q Yes?

4 A Yes.

5 Q At one point in time during the  
6 interaction, you told Mr. Ellis you were tired  
7 of listening to his dumb ass; do you recall  
8 hearing that?

9 A No. Do you want to play it again?

10 Q We'll play it again.

11 A Okay.

12 (Video playing)

13 Q Did you hear that part there, I'm tired  
14 of listening to your dumb ass?

15 A No.

16 Q Oh, I'm sorry, I'm tired of dealing with  
17 your dumb ass?

18 A I heard something about dumb ass but I  
19 don't remember -- I don't recall saying that.

20 Q Well, we can listen to that part again  
21 real quick.

22 (Video playing)

23 THE WITNESS: He said dumb ass.

24 Q (By Mr. Smolen) Oh, you think it's him  
25 saying dumb ass?

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1 A It doesn't sound like my voice.

2 Q We'll listen to it one more time.

3 (Video playing)

4 Q It seems pretty distinct to me --

5 A Yes.

6 Q -- that it was you? Do you agree with  
7 that?

8 A I agree.

9 Q Why don't you tell the jury after  
10 watching this video what you told Mr. Ellis?

11 MR. GIBBS: Object to the form.

12 THE WITNESS: It was obvious what I  
13 said but --

14 Q (By Mr. Smolen) I want you to tell the  
15 jury.

16 A I told him I was I'm tired of listening  
17 to his dumb ass.

18 Q You were tired of listening to his dumb  
19 ass. Now in the deposition earlier, I had asked  
20 you about the conversations that you had had  
21 with Mr. Ellis prior to this, and you had  
22 indicated there was just the one conversation  
23 where he told you about the back pain, correct?

24 A Yes.

25 Q Okay. If that's the truth, then why

1       regarding the alleged seizures?

2           A    I was just going by my observations.

3           Q    Well, you're -- you're threatening him.

4       You're saying, if you say you're having  
5       seizures, you're going to be punished, correct?

6                    MR. GIBBS: Object to the form.

7                    THE WITNESS: You say a lot of  
8       things when you work with inmates.

9           Q    (By Mr. Smolen) Okay. And that was one  
10       of those things that you were telling Mr. Ellis  
11       that day, correct?

12          A    It was on the video, yes.

13          Q    Why would you tell an inmate that if he  
14       reports his medical condition that he's going to  
15       be punished?

16                    MS. GOOCH: Object to the form.

17                    MR. GIBBS: Same objection.

18                    THE WITNESS: I can't answer that  
19       because I don't know.

20          Q    (By Mr. Smolen) You don't dispute  
21       saying it, do you?

22          A    I can't.

23          Q    Right, we have the video of it?

24          A    Right.

25          Q    Why were you going to punish an inmate

1 --

2 A I wouldn't have punished an inmate.

3 Q -- for reporting a medical condition?

4 A I wouldn't punish an inmate.

5 Q Well, what did you tell him was going to  
6 happen to him if he started this seizure stuff  
7 up again?

8 A I don't recall.

9 (Video playing)

10 Q You're going on that D ring and that's  
11 where you're going to stay the whole fucking  
12 time because I'm sick and fucking tired of  
13 dealing with you. Did you hear -- hear that?

14 MR. GIBBS: Object to the form.

15 THE WITNESS: Yeah.

16 Q (By Mr. Smolen) Okay. Tell the jury  
17 what a D ring is.

18 A It's a metal ring that's cemented to the  
19 floor.

20 Q Okay. So if Mr. Ellis kept complaining  
21 about the fact that he was having trouble  
22 walking, the fact that he was having seizures,  
23 the fact that he was in pain, you were going to  
24 chain him to the floor of the jail is what you  
25 told him, yes?

1 A Yes.

2 Q Do you think that telling an inmate  
3 who's complaining about medical conditions that  
4 you're going to chain them to the floor of the  
5 jail is an appropriate response?

6 A No.

7 Q But that didn't stop you from telling  
8 him that that day, did it?

9 A No, but I wouldn't have done it.

10 Q You were just threatening him?

11 A Sometimes you have to threaten those  
12 inmates.

13 Q Why?

14 A Because that's -- they -- I mean, you  
15 have to respond to them in a way that they will  
16 understand.

17 Q Okay. And what was it that you were  
18 wanting Mr. Ellis to understand?

19 A That if he was faking -- I'm not saying  
20 he was because I don't know -- I wasn't there --  
21 that --

22 Q You were there?

23 A Not when he had the seizure -- or  
24 supposedly the seizure that night -- the night  
25 before that.

1 Q You told him that if any of these  
2 medical conditions -- if he continues to  
3 complain about them, he's going to be chained to  
4 the floor, yes?

5 A That's on there. That's what I said.

6 Q You said that you had talked to him that  
7 way because sometimes you just have to talk to  
8 inmates like that?

9 A Sometimes.

10 Q Was the jail always -- or was the jail  
11 staff always okay with you talking to inmates  
12 like that when you had to?

13 MR. GIBBS: Object to the form.

14 THE WITNESS: I don't know.

15 Q (By Mr. Smolen) I mean, did anyone ever  
16 discipline you for talking to inmates like that?

17 A No.

18 Q Anyone tell you that it was outside  
19 their accepted practices or procedures?

20 A No.

21 Q Anyone give you any kind of corrective  
22 action?

23 A No.

24 Q Would the sheriff or jail administrator  
25 tell you at times that you needed to talk tough

1 like that to inmates?

2 A No.

3 Q That's something that you came up with  
4 on your own?

5 A It was just a way you had to do it  
6 sometimes.

7 Q Okay.

8 A It's a jail facility. It's a  
9 correctional facility.

10 Q And at least you understood that that  
11 was an accepted practice because of the type of  
12 facility in which the medical was being  
13 delivered that you could do that?

14 MS. GOOCH: Object to the form.

15 THE WITNESS: No.

16 Q (By Mr. Smolen) Did anyone prevent you  
17 from doing that when you would do it?

18 A I --

19 MS. GOOCH: I'm sorry, I couldn't  
20 understand your question, Dan.

21 Q (By Mr. Smolen) Would anyone ever  
22 prevent you from talking to inmates like that?

23 MS. GOOCH: Object to the form.

24 THE WITNESS: No.

25 Q (By Mr. Smolen) Okay.

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1 A It wasn't normal practice for me.

2 Q Okay.

3 A I don't know why I did it.

4 Q How many inmates had you chained to a D  
5 ring before for complaining about medical  
6 conditions?

7 A None.

8 MS. GOOCH: Object to the form.

9 Q (By Mr. Smolen) Excuse me?

10 A None.

11 Q Okay. Why did you then make the  
12 decision that day to make that statement to Mr.  
13 Ellis?

14 A I can't answer that. I don't know.

15 Q Why would you ever discourage an inmate  
16 from disclosing their subjective complaints?

17 A I wouldn't. I didn't ever before. I  
18 don't know. It's not a general practice I --  
19 that I would do.

20 Q Why did you do it with Mr. Ellis?

21 A I can't answer that.

22 Q Why can't you answer it?

23 A I don't know.

24 Q I want you to hear this other part here.

25 (Video playing)

1           Q    All right.  Ain't a damn thing wrong  
2 with you and that you were sick and tired of  
3 dealing with his dumb ass.  How were you able to  
4 make that diagnosis?

5           A    I didn't make a diagnosis.  It was my  
6 observation.

7           Q    Your observation that there was nothing  
8 wrong with him?

9           A    That he had -- was -- he had been up  
10 walking, his legs were not black as he said they  
11 were.  He had -- all morning long he had been up  
12 eating breakfast.  He ate his breakfast.  He was  
13 drinking.  He was going to the restroom.  It  
14 wasn't an diagnosis.  It was an observation.

15          Q    Your observation was that there was  
16 nothing wrong with him?

17          A    My observation was there was -- what he  
18 was stating at the time was not true because his  
19 feet were not purple.  They were not black at  
20 that time.

21          Q    I mean, how is it that Mr. Ellis is  
22 found and he's got black limbs a few hours  
23 later, but at the time you're screaming at him,  
24 he didn't?

25          A    That's something --

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1 MR. GIBBS: Object to the form.

2 MS. GOOCH: Object to the form.

3 THE WITNESS: That's something I  
4 can't answer.

5 Q (By Mr. Smolen) I mean, do you think he  
6 could just see into the future that his legs  
7 were going to turn black?

8 MS. GOOCH: Object to the form.

9 MR. GIBBS: Object to the form.

10 THE WITNESS: I can't answer that.

11 Q (By Mr. Smolen) When he told you that  
12 his feet were black and you're screaming at him,  
13 did you do any kind of other assessment?

14 A I can't answer that. I don't remember.

15 Q When he told you that his legs were  
16 numb, did you do any other kind of assessment?

17 MR. GIBBS: Object to the form.

18 THE WITNESS: No.

19 Q (By Mr. Smolen) I mean, he was  
20 repeatedly telling you he couldn't feel his  
21 legs, correct?

22 A He said he couldn't move his legs.

23 Q And when he told you that, did you do  
24 any kind of medical to assess his condition?

25 A No.